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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,154	03/29/2004	Gabriel Petta	3445-151	1119
1059 7590 04/15/2008 BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA				
EXAMINER STRIMBU, GREGORY J				
ART UNIT 3634		PAPER NUMBER		
MAIL DATE 04/15/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/811,154

**Applicant(s)**

PETTA ET AL.

**Examiner**

Gregory J. Strimbu

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 of copending Application No. 11/229,839 in view of Davies. Claim 11 of copending Application No. 11/229,839 is silent, concerning, *inter alia*, upper and lower sash frame members and a pair of opposed side frame members.

However, Davies discloses a frame assembly for a window or patio door, the frame assembly comprising: a) an integrally molded unitary master frame 10 including upper and lower horizontal master frame members 15 and 16, and opposed first and second vertical jamb members 13 and 14 extending between the upper and lower horizontal master frame members; and b) an integrally molded unitary sash frame 12

slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 46 and 47, and a pair of opposed side members 11 and 45 extending vertically between the upper and lower horizontal sash frame members, a mullion 33 having glazing support details 39, screen support details 63, projections 23 and channels 54, 44, 56, a first sash frame interlacing configuration 78, a first cavity (not numbered, but shown in figure 2 above the sliding sash frame 12 where the reference character 77 is located) which traverses the mullion as shown in figure 6, a shoulder defined by the cut 78B as shown in figure 6, a second sash frame interlacing configuration 23 as shown in figure 2, a glider element 74.

It would have been obvious to one of ordinary skill in the art to provide claim 11 of copending Application No. 11/229,839 with a sash frame having lower sash frame members and a pair of opposed side frame members, a mullion, a sash frame interlacing configurations, and glider elements, as taught by Davies, to enable the sash frame to hold a pane of glass, to improve the strength of the master frame, to enable a user to remove the sash frame, and to enable the sash frame to slide easily between opened and closed position, respectively.

This is a provisional obviousness-type double patenting rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Arbetter (US 5189841).

Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Arbetter. Arbetter discloses a frame assembly comprising:

a) an integrally moulded unitary master frame 60 including upper and lower horizontal master frame members 65, 67, and opposed first and second vertical jamb members 61, 63 extending between the upper and lower horizontal master frame members;

b) an integrally moulded unitary sash frame 140 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 141, 147, and a pair of opposed side members 143, 145 extending vertically between the upper and lower horizontal sash frame members, the sash frame being slidable between open and closed positions within the master frame; and

c) seal support elements 70 integrally moulded with the master frame for securing seals to the master frame, the seals adapted to engage the sash frame for inhibiting penetration of fluid from the an exterior environment to the an interior environment when the sash frame is in the closed position.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies (US 5280686) in view of Kownacki et al. (US 6749797). Davies discloses a frame assembly comprising: a) a unitary master frame 10 including upper and lower horizontal master frame members 15 and 16, and opposed first and second vertical jamb members 13 and 14 extending between the upper and lower horizontal master frame members; and b) a unitary sash frame 12 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 46 and 47, and a pair of opposed side members 44 and 45 extending vertically between the upper and lower horizontal sash frame members, a mullion 33 having glazing support details 39, screen support details 63, projections 23 and channels 54, 55, 56, a first sash frame interlacing configuration (not numbered, but comprising the portion of the master frame 10 which is removed for the installation of element 78), a first cavity (not numbered, but shown in figure 2 above the sliding sash frame 12 where the reference character 77 is located) which traverses the mullion as shown in figure 6 and is open towards the lower horizontal master frame member as shown in figure 4, a shoulder defined by the cut 78B as shown in figure 6, a second sash frame interlacing configuration (not shown but comprising the portion of the guide 24 which is cut out for

the insertion of element 78 when the master frame is inverted), a glider element 74.

Davies is silent concerning a one-piece unitary master and sash frames.

However, Kownacki et al. discloses a method of making a master frame and a sash frame of a window comprising integrally molding the master frame 30 and the sash frame 50.

It would have been obvious to one of ordinary skill in the art to make the frames of Davies, using the integrally molding method steps, disclosed by Kownacki et al., to avoid water and air penetrating the corner joints and to increase the torsional rigidity of the frames.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication 2002-227551 in view of Kownacki et al. Japanese Patent Publication 2002-227551 discloses a frame assembly comprising: a) a unitary master frame including upper and lower horizontal master frame members 10 and 40, and opposed first 20 and second 30 vertical jamb members extending between the upper and lower horizontal master frame members; b) a unitary sash frame 50 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 51 and 55, and a pair of opposed side members 52 and 53 extending vertically between the upper and lower horizontal sash frame members, the sash frame being slidable between open and closed positions within the master frame; and c) seat support elements 13a integrally molded with the master frame for securing seals 14a to the master frame, the seals adapted to engage the sash frame for inhibiting

penetration of fluid from the exterior environment to the interior environment when the sash frame is in the closed position. It appears that Japanese Patent Publication 2002-227551 is silent concerning one-piece unitary master and sash frames.

However, Kownacki et al. discloses a method of making a master frame and a sash frame of a window comprising integrally molding the master frame 30 and the sash frame 50.

It would have been obvious to one of ordinary skill in the art to make the frames of Japanese Patent Publication 2002-227551, using the integrally molding method steps, disclosed by Kownacki et al., to avoid water and air penetrating the corner joints and to increase the torsional rigidity of the frames.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication 2002-227551 in view of Kownacki et al. Japanese Patent Publication 2002-227551 discloses a frame assembly comprising: (a) a unitary master frame including upper and lower horizontal master frame members 10 and 40, and opposed first 20 and second 30 vertical jamb members extending between the upper and lower horizontal master frame members; b) a unitary sash frame 50 slidably mounted within the master frame and movable between open and closed positions, the sash frame including upper and lower horizontal sash frame members 51 and 55, and a pair of opposed side members 52 and 53 extending vertically between the upper and lower horizontal sash frame members; (c) at least one fluid penetration flow path (not numbered, but shown between the rail 53 and the mullion 63 as shown in figures 2 and



6) extending between the external and internal environments through the frame assembly when the sash frame is in the closed position; and (d) a weather buffering mechanism provided in the at least one fluid penetration flow path and adapted to inhibit the penetration of fluid from the exterior environment to the interior environment along the fluid penetration flow path, the weather buffering mechanism including a weather buffering chamber (not numbered, but shown in figure 6 between the rail 53 and the mullion 63) disposed in the at least one fluid penetration flow path and extending between an exterior seal (not numbered, but shown on the right hand side of figure 6 as the angled surfaces of the rail 53 and the mullion) disposed upstream of the buffering chamber and an interior seal 66 disposed downstream of the buffering chamber, an exterior drain 15, wherein the weather buffering mechanism further comprises an air reservoir (not numbered, but shown in figure 5 as the volume of air defined by the U-shaped portion of the mullion 63) substantially separated from the buffering chamber by a cover member 71, the cover member comprising apertures (not numbered, but shown in figure 6 between each element 71 of the cover member 71) therethrough, the air reservoir in fluid communication with the buffering chamber through the apertures to provide a source of generally dry air to be drawn into the buffering chamber. It appears that Japanese Patent Publication 2002-227551 is silent concerning one-piece unitary master and sash frames.

However, Kownacki et al. discloses a method of making a master frame and a sash frame of a window comprising integrally molding the master frame 30 and the sash frame 50.

It would have been obvious to one of ordinary skill in the art to make the frames of Japanese Patent Publication 2002-227551, using the integrally molding method steps, disclosed by Kownacki et al., to avoid water and air penetrating the corner joints and to increase the torsional rigidity of the frames.

### ***Response to Arguments***

Applicant's arguments filed January 10, 2008 have been fully considered but they are not persuasive.

Regarding the applicant's comments concerning Arbetter, the examiner respectfully disagrees. Arbetter clearly discloses that the sashes 62 and 64 are slidably mounted within the frame 60 via the interaction of the flanges 155, 157 and the tracks 71, 73 (see column 7, lines 49-53). The applicant's argument concerning the molded sash 140 not possibly being installed in the unitary molded window frame 60 because the flanges 155 and 157 would interfere with the sidewalls of the channels 71 and 73 is not persuasive. Each pair of the flanges 155 and 157 would fit in a respective channel 71, 73, i.e., between the sidewalls of the respective channel, and thus would not interfere with the sidewalls of the channels. The applicant's argument that the sashes 62 and 64 could not be installed in the frame 60 is not persuasive since the sashes could be installed in a manner as shown in figure 6 of U.S. Patent No. 5,065,544 to Martin. Finally, the flange 70 of the frame 60 could clearly support a seal which would face toward the channel 73 so as to engage the sashes mounted in said channel.

The applicant's comments concerning Kownacki et al. are not persuasive because Kownacki was filed February 6, 2002 by another before the effective filing date of the present application. Thus, Kownacki et al. qualifies as prior art under 35 USC 102(e). The applicant's assertion that there is no evidence that one skilled in the art would have any expectation of success is not persuasive because KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. Moreover, one of ordinary skill in the art would have an expectation of success since Kownacki et al. discloses the ejection of hollow chambers 42 from a mold. Thus, the hollow chambers of Davies could also be ejected from a mold.

With respect to the applicant's comments concerning Japanese reference 2002-227551, the applicant's attention is directed to US Patent Application Publication No. 2003/0177699.

Finally, the filing of the terminal disclaimer on September 26, 2007 is noted and it will be considered in due course.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/  
Primary Examiner, Art Unit 3634